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the documents, although he knows at the time that the goods are not in existence; and the buyer is not relieved from the liability to pay the price, although the insurance does not cover war risk and he has no recovery for the loss. *In re Weis & Co.* v. *Credit Colonial et Commercial (Antwerp)*, [1916] 1 K. B. 346.

SALVAGE — WHAT CONSTITUTES SALVAGE SERVICE. — The plaintiff schooner transferred passengers and baggage from the defendant ship which had run aground. The list of the ship and the number of passengers aboard her created a reasonable apprehension of danger although the rescue could have been accomplished without the aid of the schooner. *Held*, that the service constituted salvage. *Clayoquot Sound Canning Co.* v. *S. S. Princess Adelaide*, 48 Dom. L. R. 478.

The defendant tug had her rudder carried away in a heavy gale. In response to distress signals the plaintiff trawler made fast and brought the tug safely into port. *Held*, that the service constituted salvage. *The Andrew Kelly* v. *The Commodore*, 48 Dom. L. R. 213.

For a discussion of these cases, see NOTES, p. 453, *supra*.

SPECIFIC PERFORMANCE — INADEQUACY OF CONSIDERATION AS A DEFENSE — CONTRACT TO DEVISE IN CONSIDERATION OF PERSONAL SERVICES. — The petitioner and his uncle had contracted that, in consideration of personal services to be performed by the petitioner during the uncle's lifetime, the latter would make a will and leave his entire property to the petitioner. The bill alleged complete performance by the petitioner, the uncle's death without having made a will, and prayed specific performance of the agreement. The defendant filed a demurrer, on the ground that the petition did not specify the value of the estate, or the value and extent of the services alleged to be the supporting consideration of the contract. A Georgia statute provides that "mere inadequacy of price . . . may justify a court in refusing to decree a specific performance." (1910 GA. CIV. CODE, § 4637.) *Held*, that the demurrer be sustained. Potts *v.* Mathis, 100 S. E. 110 (Ga.).

A valid contract to devise realty in consideration of personal services will be specifically enforced against the heir or devisee where the promisee has fully performed. *Howe* v. *Watson*, 179 Mass. 30, 60 N. E. 415; *Burdine* v. *Burdine's Ex'r*, 98 Va. 515, 36 S. E. 992; *Brinton* v. *Van Cott*, 8 Utah, 480, 33 Pac. 218. See 30 HARV. L. REV. 192. See also 28 HARV. L. REV. 241–245. Although the remedy by specific performance lies within the discretion of the court, a mere inequality of price and value will not be reason for denying it. *Seymour* v. *Delancy*, 3 Cow. (N. Y.) 445; *Lawson* v. *Mullinix*, 104 Md. 156, 64 Atl. 938; *Harrison* v. *Town*, 17 Mo. 237. See 15 HARV. L. REV. 318 and 741; 27 HARV. L. REV. 288. But if the inadequacy of the consideration is so gross as to constitute great hardship, or is coupled with sharp practice or unfairness, equity will not decree specific performance. *Cox* v. *Burgess*, 29 Ky. L. Rep. 972, 96 S. W. 577; *Marks* v. *Gates*, 154 Fed. 481; *Grizzle* v. *Sutherland*, 88 Va. 584, 14 S. E. 332. The fairness of a contract to devise in consideration of personal services should be determined with reference to the breadth of the undertaking to serve, and should not be deemed unfair merely because the contract has turned out to be advantageous to one of the parties. *Warner* v. *Marshall*, 166 Ind. 88, 75 N. E. 582; *Bless* v. *Blizzard*, 86 Kan. 230, 120 Pac. 351; *Howe* v. *Watson*, 179 Mass. 30, 60 N. E. 415. Statutes in some jurisdictions provide that specific performance "cannot" be given in case the consideration be inadequate. See 1915 CAL. CIV. CODE, § 3391; 1907 MONT. REV. CIV. CODE, § 4417; 1913 SO. DAK. REV. CIV. CODE, § 2345. It has been intimated that such a statute makes inadequacy of consideration a ground for refusing specific performance apart from circumstances of hardship or unfairness. *Morrill* v. *Everson*, 77 Cal. 114,

19 Pac. 190. The proper interpretation seems to be, however, that the usual equity rule is declared. See *Phelan* v. *Neary*, 22 S. Dak. 265, 117 N. W. 142; *Prince* v. *Lamb*, 128 Cal. 120, 60 Pac. 689; *White* v. *Sage*, 149 Cal. 613, 87 Pac. 193. This interpretation would seem clear when the statute, as in the principal case, provides that mere inadequacy of price "may justify" a court in refusing to decree specific performance. It has been held that a statute such as those cited above places the burden upon the plaintiff of alleging facts in his declaration which affirmatively show adequacy of consideration. *White* v. *Sage, supra*. But it seems more reasonable to hold that inadequacy of consideration is a matter of defense. *Finlen* v. *Heinze*, 28 Mont. 548, 73 Pac. 123. In the principal case there are no circumstances alleged which give rise to an inference of hardship or unfairness. It would seem, therefore, that the demurrer should have been overruled.

TAXATION — LOCAL ASSESSMENT FOR "STOCK LAW FENCES" — DIVERSION TO GENERAL FUND. — A statute authorized a county to sell its "stock law fences," now no longer necessary, and directed that the proceeds, as well as the surplus of the stock law fund, should be returned to the general fund of the county. When the fences were built, assessments had been imposed upon landowners in that portion of the county where the fences were located. These landowners seek to have the proceeds of the sale and the surplus distributed among themselves alone, attacking the statute as unconstitutional. *Held*, that the statute is constitutional. *Parker* v. *Board of Commissioners of Johnston County*, 100 S. E. 244 (N. C.).

The taxes with the proceeds of which the fences had been built were in the nature of local assessments. *Cain* v. *Commissioners of Davie County*, 86 N. C. 8. Such assessments are not taxes within the equality and uniformity provisions of the state constitutions. *Arnold* v. *Mayor, etc. of Knoxville*, 115 Tenn. 195, 90 S. W. 469; *City of Auburn* v. *Paul*, 84 Me. 212, 24 Atl. 817; *City of St. Joseph* v. *Owen*, 110 Mo. 445, 19 S. W. 713. But assessments must be apportioned according to benefits; and by the weight of authority constitutional provisions which forbid the taking of property without due process of law make such apportionment mandatory. *White* v. *City of Tacoma*, 109 Fed. 32; *Erie* v. *Russell*, 148 Pa. St. 384, 23 Atl. 1102. See *Stuart* v. *Palmer*, 74 N. Y. 183, 189. See 1 PAGE AND JONES, TAXATION BY ASSESSMENT, § 118. If the money has been collected by assessment, but not expended, and the improvement abandoned, the persons assessed have a right to a refund. *McConnville* v. *City of St. Paul*, 75 Minn. 383, 77 N. W. 993. See *Bradford* v. *City of Chicago*, 25 Ill. 411, 416. And a similar right exists where there is a surplus. See *City of Chicago* v. *McCormick*, 124 Ill. App. 639, 640; *Cleveland* v. *Tripp*, 13 R. I. 50, 64. But if the proceeds have been used for the designated purpose, the person complaining cannot recover, even though the expected benefit has not accrued to him. *Germania Bank* v. *City of St. Paul*, 79 Minn. 29. The principal case seems doubtful, unless the decision can be rested upon the ground that, in view of the small amount involved, distribution among the property owners would be inexpedient and would yield almost nothing. It has been held that the constitutional requirement that taxes shall be uniform applies to their levy, and not to their distribution after they have been raised. *Kerr* v. *Perry School*, 162 Ind. 310, 70 N. E. 246; *Holton* v. *Mecklenburg County Com'rs*, 93 N. C. 430.

TAXATION — PARTICULAR FORMS OF TAXATION — TRANSFER TAX — TRANSFER TO TAKE EFFECT AT DEATH. — An uncle, retiring from a partnership in which he and his nephew were the only members, gave up to his nephew a debt which the partnership owed him, upon the nephew's promise to leave the money in the business and pay him two per cent on the amount until his death.